

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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ERNEST CARTER,

Case No. 18-CV-0700 (JRT/SER)

Petitioner,

v.

**REPORT AND RECOMMENDATION**

STATE OF MINNESOTA,

Respondent.

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In an order dated May 21, 2018, this Court noted that, by all appearances, petitioner Ernest Carter failed to exhaust all available state remedies for the claim presented in his amended petition for a writ of habeas corpus. *See* ECF No. 18 (citing U.S.C. § 2254(b)). Carter was ordered to submit an affidavit and exhibits demonstrating exhaustion, failing which it would be recommended that his petition be dismissed without prejudice. *Id.* After a request for an extension of time in which to submit the affidavit and exhibits, Carter was given until July 13, 2018, in which to do so. *See* ECF No. 20.

The deadline has passed, and Carter has not submitted the ordered documents. Accordingly, it is now recommended that this matter be dismissed without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b). In the alternative, this matter may also be dismissed without prejudice for failure to exhaust available state remedies, as set forth more fully in this Court's May 21 order. Each of Carter's pending motions for *in forma pauperis* status or for more time to pay the filing fee may be denied as moot in light of the fact that Carter has already paid the \$5.00 filing fee in this matter.

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, IT  
IS HEREBY RECOMMENDED THAT:

1. The petition for a writ of habeas corpus of petitioner Ernest Carter be  
DISMISSED WITHOUT PREJUDICE for failure to prosecute or,  
alternatively, for failure to exhaust state remedies.
2. Carter's remaining motions [ECF Nos. 9, 10, 13, & 14] be DENIED.

Dated: August 10, 2018

s/ Steven E. Rau  
Steven E. Rau  
U.S. Magistrate Judge

**NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).